

Exhibit B

Barry Scarbrough

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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IN RE: SCHERING-PLOUGH :
CORPORATION/ENHANCE : CIVIL ACTION NO.
SECURITIES LITIGATION : 08-397 (DMC) (JAD)

IN RE: MERCK & CO., INC. :
VYTORIN/ZETIA SECURITIES : CIVIL ACTION NO.
LITIGATION : 08-2177 (DMC) (JAD)

IN RE: SCHERING-PLOUGH :
CORP. ENHANCE ERISA : CIVIL ACTION NO.
LITIGATION : 08-1432 (DMC) (JAD)

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MONDAY, JUNE 13, 2011

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Videotaped deposition of BARRY
SCARBROUGH, taken pursuant to subpoena, was
held at the law offices of Davis Graham &
Stubbs, LLP, 1550 17th Street, Suite 500,
Denver, Colorado 80202, commencing at 1 p.m.,
on the above date, before Lisa A. Knight,
Registered Merit Reporter and Certified
Realtime Reporter.

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<p>1 Q. Okay. Did you have any</p> <p>2 discussions with Mr. Hassan about ENHANCE?</p> <p>3 A. No.</p> <p>4 Q. Did you have any discussions</p> <p>5 with Ms. Cox about ENHANCE?</p> <p>6 A. No.</p> <p>7 Q. And other than the conference</p> <p>8 calls you've talked about already where the</p> <p>9 concerns were raised and the suppositions,</p> <p>10 did you have any discussions with Mr. Ziakas</p> <p>11 about ENHANCE that you recall?</p> <p>12 A. No.</p> <p>13 Q. Same question with Mr. Nichols.</p> <p>14 Did you have any discussions about ENHANCE</p> <p>15 with him other than what you've testified to</p> <p>16 that you recall?</p> <p>17 A. The only thing that I recall is</p> <p>18 when he had his conference with the regional</p> <p>19 directors, he shared a very similar directive</p> <p>20 as to why the data was delayed.</p> <p>21 Q. Which is what you referred to</p> <p>22 as "data collection issues"?</p> <p>23 A. Correct.</p> <p>24 Q. Did you have an understanding,</p>	<p>1 A. No. I think the final meeting</p> <p>2 that I had attended where the marketing team</p> <p>3 was present, Mike McCann discussed or briefly</p> <p>4 mentioned a similar problem.</p> <p>5 So we were attending the</p> <p>6 Vytorin-Zetia breakout for the regional</p> <p>7 directors, and he mentioned data collection.</p> <p>8 Tough time getting it together. Could not</p> <p>9 present the data at this time.</p> <p>10 Q. And other than taking them at</p> <p>11 their words, did you have any other insight</p> <p>12 into what the delay was being caused by?</p> <p>13 A. No. Like I say, you know, the</p> <p>14 only concern that pops into mind, being in</p> <p>15 the business for ten years, is that a delay</p> <p>16 might be negative.</p> <p>17 Q. Sure.</p> <p>18 A. So, you know --</p> <p>19 Q. Right. That's guesswork?</p> <p>20 A. That's guesswork.</p> <p>21 Q. Yeah.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. All right.</p> <p>24 So let me now turn to your</p>
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<p>1 sir, of what that meant?</p> <p>2 A. In dealing with Baycol in the</p> <p>3 past and other statins, I knew that they were</p> <p>4 extremely large trials typically that</p> <p>5 sometimes -- you know, for example, like a</p> <p>6 Framingham or something more significant</p> <p>7 could span years.</p> <p>8 So it wouldn't be unusual to</p> <p>9 have data collection issues when we might be</p> <p>10 talking about -- I didn't even know the "in,"</p> <p>11 but I could suppose the patient in could be</p> <p>12 upwards of 3- to 5- to 6,000 patients.</p> <p>13 So it wasn't surprising that it</p> <p>14 would take some time to aggregate the data.</p> <p>15 Q. Other than what you've</p> <p>16 testified to, what is your understanding of</p> <p>17 the design of ENHANCE, if you had one?</p> <p>18 A. Just don't have one. Sorry.</p> <p>19 Q. Okay. Fair enough.</p> <p>20 A. Yeah.</p> <p>21 Q. Understood.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. And did anyone tell you</p> <p>24 any other reasons for the delay in ENHANCE?</p>	<p>1 conversation, either one or two of them, with</p> <p>2 the plaintiffs' attorneys.</p> <p>3 A. Yes.</p> <p>4 Q. You believe it was a lady.</p> <p>5 A. (Nodded head up and down.)</p> <p>6 Q. In the first conversation which</p> <p>7 I believe you said took maybe 20 minutes,</p> <p>8 could you tell us to the best of your</p> <p>9 recollection what she said to you and what</p> <p>10 you said to her.</p> <p>11 A. Yes.</p> <p>12 She discussed the reason for</p> <p>13 the call, so that there was a case ongoing</p> <p>14 between plaintiff and Schering-Plough related</p> <p>15 to ENHANCE trial. And she asked very similar</p> <p>16 questions to today: What was my</p> <p>17 understanding.</p> <p>18 I shared with her that having</p> <p>19 left in January 2008, it wasn't until I</p> <p>20 understood perhaps a week or a week later</p> <p>21 that something was wrong. An old friend of</p> <p>22 mine mentioned that the -- some of the</p> <p>23 information presented at CHEST was going to</p> <p>24 create quite an issue for -- related to the</p>

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<p>1 ENHANCE trial, itself.</p> <p>2 But what I shared with her was</p> <p>3 that was all after my release from the</p> <p>4 organization. And the only communication I</p> <p>5 received related to ENHANCE was that phone</p> <p>6 mail from Todd Nichols related to data</p> <p>7 collection and that we were to share that</p> <p>8 with customers if they had concerns.</p> <p>9 Q. Okay.</p> <p>10 A. She asked if I knew of anything</p> <p>11 else related to concerns about the trial.</p> <p>12 And I said I had been on Cafepharm, which</p> <p>13 was the first time that I had been on the</p> <p>14 site.</p> <p>15 And one of the reasons I went</p> <p>16 on Cafepharm, quite frankly, was also to</p> <p>17 network for additional positions. So clearly</p> <p>18 I would visit occasionally the Schering-</p> <p>19 Plough feedback.</p> <p>20 And what I shared with her was</p> <p>21 that I had seen probably two or three posts</p> <p>22 from anonymous sales professionals that</p> <p>23 related great concerns about the results at</p> <p>24 CHEST and that the posts were individuals</p>	<p>1 Q. And -- now let me first ask</p> <p>2 about the discussion about Cafepharm.</p> <p>3 A. Correct.</p> <p>4 Q. You said you had visited</p> <p>5 Cafepharm right around that time when this</p> <p>6 lady called because you were networking --</p> <p>7 A. Correct.</p> <p>8 Q. -- for other sales positions?</p> <p>9 A. That's right.</p> <p>10 Q. Because you had just left</p> <p>11 Schering-Plough.</p> <p>12 A. Correct.</p> <p>13 Q. Got it.</p> <p>14 A. See, you can get some very</p> <p>15 honest feedback from folks on other</p> <p>16 organizations. So if you're looking at other</p> <p>17 organizations, they can give you, you know,</p> <p>18 pretty clear pros and cons.</p> <p>19 Q. Would you -- and prior to that</p> <p>20 occasion, you had not visited Cafepharm?</p> <p>21 A. Never.</p> <p>22 Q. Had you heard of it prior to</p> <p>23 that occasion?</p> <p>24 A. Oh, yes.</p>
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<p>1 getting very concerned about their career</p> <p>2 future related to the demise or the</p> <p>3 difficulty of the top -- the top medication</p> <p>4 for Schering-Plough.</p> <p>5 Q. Okay. Great.</p> <p>6 First of all, when you say</p> <p>7 "CHEST," what are you referring to?</p> <p>8 A. The annual meeting for, you</p> <p>9 know, cardiothoracic surgeons and</p> <p>10 cardiologists.</p> <p>11 Q. Would that be the American</p> <p>12 College of Cardiologists?</p> <p>13 A. Correct. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. And obviously the -- well, I've</p> <p>16 been out of the business for so long, but</p> <p>17 it's obviously, you know, the top meeting for</p> <p>18 cardiologists, the most influential. So if</p> <p>19 there's negative publicity or, heaven forbid,</p> <p>20 negative trial results at CHEST, it can</p> <p>21 impact your market share almost immediately.</p> <p>22 Q. And is that congress typically</p> <p>23 held in March of each year?</p> <p>24 A. I believe, correct.</p>	<p>1 Q. You had?</p> <p>2 A. Yeah.</p> <p>3 Q. And what did you hear about it</p> <p>4 before you visited it?</p> <p>5 A. That it was very rumor-based.</p> <p>6 And one of the reasons I hadn't visited it is</p> <p>7 I just don't like rumors --</p> <p>8 Q. Okay.</p> <p>9 A. -- I didn't -- if there were</p> <p>10 rumors on me or another individual or other</p> <p>11 organizations, I just -- I really choose not</p> <p>12 to get involved. So I got involved for the</p> <p>13 career search and found it somewhat useful</p> <p>14 but not as impactful as other tools.</p> <p>15 Q. And when you say you found it</p> <p>16 "somewhat useful," do you mean that it was</p> <p>17 useful in terms of trying to figure out what</p> <p>18 organization you might want to work for --</p> <p>19 A. Correct.</p> <p>20 Q. -- or what organizations might</p> <p>21 have openings available?</p> <p>22 A. Correct, and/or the culture --</p> <p>23 Q. Okay.</p> <p>24 A. -- at the organization. So --</p>

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<p>1 you know, because it will -- it will draw out 2 both sides of an organization. 3 So if people have concerns, 4 they'll post it because they feel -- you 5 know, it's anonymous. They're comfortable. 6 If people are really pleased, 7 they'll do that as well, and they'll counter 8 a negative post or they'll give you thoughts 9 and feedback on the culture compensation, 10 their feelings on the future for a certain 11 medication. 12 Q. And approximately how many 13 times did you visit Cafepharm after leaving 14 Schering-Plough? 15 A. In total or just through that 16 time period? 17 Q. In total. 18 A. I would say 15 times maybe, 19 16 times. 20 Q. And it was in those 15 or 16 21 times after you left Schering-Plough that you 22 saw the postings concerning ENHANCE? 23 A. Correct. 24 Q. And were they all anonymous</p>	<p>1 attorney that you had, you also mentioned a 2 voicemail from Todd Nichols. 3 A. Yes. 4 Q. Okay. Could you tell me what 5 you recall about that voicemail. 6 A. I don't recall a date, but I 7 recall it coming in the afternoon or evening, 8 picking it up, say, 7 or 8 o'clock mountain 9 time. And maybe -- Todd was pretty concise, 10 I want to say about three or four minutes, 11 discussing that he had heard our feedback as 12 well as feedback from district managers in 13 the division that there were concerns. 14 He knew that the customer, top 15 physicians and cardiologists, were being 16 concerned. And he said that our position 17 that we should take and our communication we 18 should make to customers was data collection 19 issues were delaying trial results. 20 Q. Okay. And do you recall 21 approximately when this voicemail happened in 22 relation to your leaving Schering-Plough? 23 A. Wow. It's really hard to 24 remember if it was before or after the</p>
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<p>1 postings? 2 A. Yes. Yeah, just about every 3 posting is anonymous, so . . . 4 Q. Did you, yourself, post 5 anything on Cafepharm? 6 A. No, I've never posted. I did 7 counter a negative post. So I sent them two 8 e-mails to remove postings. 9 Q. Have you, yourself, seen any 10 posts about yourself? 11 A. Oh, yes. 12 Q. And is that how you know that 13 the site is rumor-based? 14 MR. GRAZIANO: Objection. 15 A. I wasn't comfortable with the 16 truth of the posts, yeah. So it's -- since 17 it's anonymous and wide open, you know, it 18 almost becomes the Twitter of pharma. So you 19 have to be -- you have to take it with a 20 grain of salt. 21 BY MS. OH: 22 Q. Okay. 23 In my questions about the 24 initial conversation with the plaintiffs'</p>	<p>1 holidays. 2 Q. And by "holidays," do you 3 mean -- 4 A. The Christmas holiday, 5 Christmas and New Year's. 6 Q. Okay. 7 A. I want to say it came before 8 the holidays. 9 Q. Okay. So it was late 2007? 10 A. Correct. 11 Q. Okay. Would it be fair to say 12 it's all within the same time period where 13 those conference calls took place? 14 A. Correct. 15 Q. Okay. 16 A. Because I would then, in turn, 17 have to forward that message on to my team, 18 which I did. 19 Q. So do you recall anything else 20 about your conversation with the plaintiffs' 21 attorney? 22 A. That's the only thing I recall, 23 yeah. 24 Q. Did the attorney explain to you</p>

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<p>1 that she was an attorney, and she would be 2 using your words as a confidential informant 3 for the plaintiffs? 4 A. She said you'd be using -- she 5 said she'd be using my information. I don't 6 recall the phrase "confidential informant." 7 Q. Did she explain to you that 8 your words would be quoted in a court file 9 document? 10 A. Yes, she did. 11 Q. Did she come back to you and 12 review with you what statements she would 13 like to use? 14 A. No. 15 Q. To this day, have you seen any 16 court file document that purports to refer to 17 information that the plaintiffs obtained from 18 you? 19 A. No documentation. 20 Q. Orally have you been told what 21 information has been used that you provided? 22 A. Yes. 23 Q. What were you told? 24 A. Yeah. I did receive a call --</p>	<p>1 or visited Cafepharm? 2 A. I don't recall that, but I do 3 -- yeah. There were a few mentors that had 4 been on Cafepharm. 5 Q. Okay. 6 A. I don't recall that, but that 7 wouldn't -- that wouldn't surprise me if I 8 said that. 9 Q. Were they mentors from 10 Schering-Plough or Bayer or other entities? 11 A. Both. 12 Q. Both? 13 A. Yeah. 14 Q. Can you identify any specific 15 individuals at Schering-Plough? 16 A. At Schering-Plough? No, I 17 can't. I can at Bayer, but I can't at 18 Schering-Plough. Yeah. 19 Q. Did you also use any words or 20 substance to the effect that about 90 percent 21 of those in the pharmaceutical industry visit 22 Cafepharm? 23 A. Yeah, that wouldn't surprise me 24 because it's -- at the time and I would</p>
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<p>1 this was after I received the subpoena. 2 Q. Oh, okay. From the defendants' 3 lawyers? 4 A. Correct. 5 Q. From Mr. Juceam? 6 A. Correct. 7 Q. Okay. My question was: Did 8 the plaintiffs' attorney who spoke to you 9 first ever come back to you to inform you how 10 they used the information that they 11 reportedly obtained from you? 12 A. No. No. 13 Q. Okay. Did you and the 14 plaintiffs' attorney, in that initial 15 conversation, discuss what Cafepharm was? 16 A. I believe she asked a similar 17 question, how often I visited, I believe. 18 And I think I told her at that time I had 19 just started after, you know, years of 20 hearing about it. I don't recall anything 21 other than how many times I had visited. 22 Q. Did you ever inform the 23 plaintiffs' attorney, in words or substance, 24 that all of your mentors had used Cafepharm</p>	<p>1 imagine still is a very popular site. 2 Q. And was that 90-percent number 3 something that you had seen in a document or 4 is that -- 5 A. No. 6 Q. -- something you're guessing? 7 A. That would be a guess from 8 conversations and feedback from managers, 9 reps, friends, others in the business that 10 regularly quoted it, you know, almost to the 11 point of driving me crazy because I never 12 went on, so ... 13 Q. And you weren't referring to 14 90 percent of Schering-Plough sales reps? 15 A. I was not. 16 Q. And did you tell the 17 plaintiffs' attorney, in words or substance, 18 that management referred to Cafepharm in 19 conversations? 20 A. That wouldn't surprise me at 21 all, yeah. 22 Q. But do you recall -- 23 A. I don't recall it. 24 Q. You don't recall it?</p>

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